



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0050; FRL-9979-66-Region 4]**

#### **Air Plan Approval; TN: Revisions to New Source Review**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee State Implementation Plan (SIP) to revise New Source Review (NSR) regulations. Specifically, EPA is proposing to approve the portions of a SIP revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on May 28, 2009, that modify the definitions of “baseline actual emissions.” This action is being proposed pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0050, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What Action is EPA Proposing?**

On May 28, 2009, TDEC submitted a SIP revision to EPA for approval that contains changes to Tennessee's SIP-approved major NSR permitting regulations at Tennessee Air Pollution Control Regulations (TAPCR) 1200-3-9-.01 - "Construction Permits," including the adoption of federal requirements and the modification of certain other provisions.<sup>1</sup> In this action, EPA is proposing to approve the portions of this SIP submission that make changes to the definitions of "baseline actual emissions" in Tennessee's SIP-approved Prevention of Significant

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<sup>1</sup> The major NSR program, established in parts C and D of title I of the CAA and EPA's implementing regulations at 40 CFR 51.165, 40 CFR 51.166, and 40 CFR 52.21, is a preconstruction review and permitting program applicable to new major stationary sources of regulated NSR pollutants and major modifications at existing major stationary sources. A major modification is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. See 40 CFR 51.165(a)(1), 51.166(b)(2)(i), and 52.21(b)(2)(i).

Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations at TAPCR 1200-3-9-.01(4) - “Prevention of Significant Air Quality Deterioration” and 1200-3-9-.01(5)(b) - “Nonattainment Areas,” respectively.<sup>2</sup> Tennessee’s NSR regulations at TAPCR 1200-3-9-.01 were last revised in the SIP on July 25, 2013 (78 FR 44886).

## **II. Background**

On December 31, 2002, EPA published revisions to the federal PSD and NNSR regulations. *See* 67 FR 80186 (hereinafter referred to as the 2002 NSR Rule). These revisions included several major changes to the major NSR program, including the addition of an actual-to-projected-actual emissions test and the use of “baseline actual emissions” for determining major NSR applicability for existing emissions units. For projects involving multiple existing emissions units, the definitions require the use of one consecutive 24-month period to determine baseline emissions for the emissions units being changed and allows for the use of different consecutive 24-month baseline periods for each regulated pollutant. *See* 40 CFR sections 51.165(a)(1)(xxxv), 51.166(b)(47), and 52.21(b)(48). EPA included this language in the definitions because NSR is, and has always been treated as, a pollutant-specific program.<sup>3</sup>

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<sup>2</sup> EPA’s regulations governing the implementation of NSR permitting programs are contained in 40 CFR sections 51.160 - .166, 52.21, 52.24, and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the national ambient air quality standards (NAAQS) – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR program addresses construction or modification activities that do not qualify as “major” and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

<sup>3</sup> *See* “Technical Support Document for the Prevention of Significant Deterioration (PSD) and Nonattainment Area New Source Review (NSR): Reconsideration,” pp. 14-15, available at <https://www.epa.gov/sites/production/files/2015-12/documents/petitionresponses10-30-03.pdf>, and included in the docket for this proposed action.

On September 14, 2007, EPA approved SIP submittals from TDEC incorporating revisions to Tennessee’s major NSR regulations in response to the 2002 NSR Rule (as modified in subsequent EPA rulemakings).<sup>4</sup> In defining “baseline actual emissions” in its major NSR regulations, Tennessee elected not to adopt the provision in the federal definitions that allows the use of different consecutive 24-month baseline periods for each regulated pollutant for projects involving multiple existing emission units. Therefore, Tennessee’s SIP-approved regulations only allow the same 24-month period to be chosen for all regulated NSR pollutants when calculating baseline actual emissions for major NSR applicability determinations for projects involving multiple emissions units. Compared to the federal definitions, Tennessee’s SIP-approved regulations offer less flexibility in determining baseline actual emissions for these projects.

On May 28, 2009, Tennessee submitted a SIP revision that would, among other things, change the definitions of “baseline actual emissions” in its SIP-approved major NSR regulations to allow for the use of different 24-month periods for each regulated NSR pollutant for projects involving multiple emissions units, but only under certain limiting circumstances not included in the federal definitions. The text of Tennessee’s proposed changes to its SIP-approved definitions of “baseline actual emissions” is provided in section III along with EPA’s assessment under CAA section 110(l). Section 110(l) prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) (as defined in section 171), or any other applicable requirement of the CAA.

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<sup>4</sup> EPA published rules on November 7, 2003 (68 FR 63021) and June 13, 2007 (72 FR 32526), modifying the 2002 NSR Rule. Sometimes, these three rules are collectively referred to as “NSR reform.” For more information on NSR reform, see <https://www.epa.gov/nsr/nsr-regulatory-actions#nsrreform>.

### III. Analysis of Tennessee's Submittal

Tennessee's May 28, 2009, submittal revises the SIP-approved definitions of "baseline actual emissions" at TAPCR 1200-3-9-.01(4)(b)(45)(i)(III) and 1200-3-9-.01(4)(b)(45)(ii)(IV) for PSD, and 1200-3-9-.01(5)(b)(1)(xlvii)(I)III and 1200-3-9-.01(5)(b)(1)(xlvii)(II)IV for NNSR. The relevant portion of the SIP-approved definitions read as follows:

"For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed."

The proposed language reads as follows (strikethrough indicates language removed and underlined text indicates language added):

"For a regulated NSR pollutant, when a project involves multiple emissions units, ~~only one~~ consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific consecutive 24-month baselines in determining the magnitude of a significant net emissions increase<sup>5</sup> and the applicability of major new source review requirements if all of the following conditions are met:

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<sup>5</sup> The "baseline actual emissions" for a proposed project are considered when determining whether a "significant emissions increase" will occur. If a "significant emissions increase" is shown as a result of the project, then the "net emissions increase" is calculated, considering contemporaneous and creditable increases and decreases from unrelated projects to determine whether the project will result in a "significant net emissions increase." Thus, the baseline period referenced here is most relevant to the determination of a "significant emissions increase."

I. Construction of a new source<sup>6</sup> or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.

II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the voluntary use of:

A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),

B. a coating with a lower VOC content than otherwise permitted in a coating operation,

C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and

D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.

III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source<sup>7</sup> or modification

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<sup>6</sup> Although the proposed revision refers to modifications and new sources, it does not affect new sources or new units because Tennessee's SIP-approved rules require new sources/units to use the actual-to-potential test – not the actual-to-projected-actual test – and the corresponding baseline actual emissions for new sources/units are set to zero. This is consistent with federal rules. The proposed revision only applies to projects that involve multiple existing emissions units.

<sup>7</sup> See footnote 6.

not being subject to major new source review.

IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record."

Accordingly, a project involving multiple emissions units that would be subject to major NSR permitting under the current SIP-approved regulations would not be subject to these requirements under the revised definitions if it met the limiting criteria identified above for the use of pollutant-specific baseline periods. As noted above, EPA's major NSR rules do not contain such limiting criteria. Under the federal major NSR rules, a state must adopt the federal definitions into its SIP unless the state's definitions are more stringent than, or at least as stringent as, the federal definitions. *See* 40 CFR 51.165(a)(1) and 51.166(b). EPA proposes to find that Tennessee's revisions to its SIP-approved definitions of "baseline actual emissions" are more stringent than the federal definitions given the limiting criteria and are therefore allowable changes to the State's SIP-approved NSR program pursuant to 40 CFR 51.165(a)(1) and 51.166(b).

As noted above, section 110(l) of the CAA prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and RFP (as defined in section 171), or any other applicable requirement of the CAA. The State is allowed to relax its SIP regulations as long as section 110(l) is met. EPA proposes to determine that the proposed

changes to the Tennessee SIP, as described above, would not violate section 110(l) for the reasons discussed below.

First, Tennessee's proposed changes will maintain the State program at a more stringent level than the federal NSR requirements. Unlike the federal rules, Tennessee's revised rules only allow for the use of different 2-year baseline periods under the limiting condition that "one or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate." The revised rules then provide qualifying examples that would satisfy this condition, such as the voluntary use of cleaner fuels, lower volatile organic compounds coatings, improvements in control efficiency, addition of a control device, and alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants. The permittee bears the burden of demonstrating that the limiting conditions of the regulation have been met, and if the demonstration is approved by the TDEC Technical Secretary, the demonstration and the Technical Secretary's approval must be included in the permit record. Accordingly, Tennessee's revised rules encourage sources to reduce emissions in order to qualify for the use of multiple, pollutant-specific baselines.

EPA also believes that the impact, if any, on air quality as a result of the proposed change would be small given the nature of the actual-to-projected-actual test and the limited applicability of the multiple baseline provision for the following reasons. First, the definition of "projected actual emissions" provides that the owner or operator "[s]hall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the



consecutive 24-month period used to establish the baseline actual emissions under part (b)45. of this paragraph and that are also unrelated to the particular project, including any increased utilization due to product demand growth.” TAPCR 1200-03-09-.01(4)(b)38.(i)(III). Under this provision, once the qualifying portion of any projected emissions increase is excluded, the result is the increase from the project. Accordingly, in most cases, the baseline actual emissions rate would not change the calculated emissions increase from an existing emissions unit. Second, the provision does not apply to new sources or new units at existing sources.<sup>8</sup> Third, as it relates to existing emissions units, the change only applies to projects that involve multiple emissions units and only has a potential air quality impact on those projects that might otherwise have triggered PSD or NNSR applicability for more than one pollutant. Finally, the provision is further restricted to permittees who can demonstrate, to the satisfaction of the Technical Secretary, that emissions during the single baseline period were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. In addition to narrowing the number of sources that qualify for the use of different baseline periods, this restriction also encourages the use of voluntary emissions reduction measures.

Moreover, the State is currently attaining all of the NAAQS except for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) NAAQS in a portion of Sullivan County.<sup>9</sup> Previous nonattainment areas for other NAAQS have all been redesignated to attainment, as shown in Table 1. Air quality in Tennessee has been improving in recent years, and Table 1 includes the available margin between current air quality monitoring design values, in micrograms per cubic meter (µg/m<sup>3</sup>) and

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<sup>8</sup> See footnote 6.

<sup>9</sup> On May 12, 2017, TDEC submitted a plan to EPA to attain the 2010 1-hour SO<sub>2</sub> NAAQS in Sullivan County.

parts per billion (ppb), and the most current corresponding NAAQS in each redesignated (maintenance) area.<sup>10</sup> Additionally, none of the monitors in Tennessee outside of the Sullivan County SO<sub>2</sub> nonattainment area show violating air quality data for any NAAQS.

**Table 1. Current Air Quality Status in Tennessee for Maintenance Areas**

Maintenance Areas	NAAQS for Which Area is Maintenance	Status	Current NAAQS	2015-2017 DV	Margin Relative to Current NAAQS with 2014-2016 DV
Chattanooga	1997 annual PM <sub>2.5</sub> (15.0 µg/m <sup>3</sup> )	Redesignated	12.0 µg/m <sup>3</sup>	9.0 µg/m <sup>3</sup>	-3 µg/m <sup>3</sup> (25.0%)
Knoxville	2008 ozone (75.0 ppb)	Redesignated	70 ppb	68* ppb	-2 ppb (2.9%)
Knoxville	1997 annual PM <sub>2.5</sub> (15.0 µg/m <sup>3</sup> )	Redesignated	12.0 µg/m <sup>3</sup>	10.0 µg/m <sup>3</sup>	-2 µg/m <sup>3</sup> (16.7%)
Knoxville	2006 24-hour PM <sub>2.5</sub> (35 µg/m <sup>3</sup> )	Redesignated	35 µg/m <sup>3</sup>	34 µg/m <sup>3</sup>	-1 µg/m <sup>3</sup> (2.9%)
Memphis	2008 ozone (75 ppb)	Redesignated	70 ppb	67 ppb	-3 ppb (4.3%)
Sullivan County	2008 lead (0.15 µg/m <sup>3</sup> )	Redesignated	0.15 µg/m <sup>3</sup>	0.01 µg/m <sup>3</sup>	-0.14 µg/m <sup>3</sup> (93.3%)

\* The TDEC relocated the Loudon Pope ozone site (AQS # 47-105-0108) to Loudon Elementary School (formerly Loudon Middle School, AQS # 47-105-0109) between the 2016 and 2017 ozone seasons, in accordance with the monitoring network plan. This is the combined DV between sites 47-105-0108 and 47-105-0109.

Regarding the Sullivan County SO<sub>2</sub> nonattainment area, the proposed change would not impact SO<sub>2</sub> concentrations in this area because it is in nonattainment for only one pollutant. Tennessee's revised rules only have a potential air quality impact in a nonattainment area with a multiple-unit project that could avoid NNSR through the use of different baseline periods for different pollutants. Therefore, in a nonattainment area such as Sullivan County where only one pollutant is subject to NNSR review, the revised rule has no impact.

<sup>10</sup> Air quality design values for all criteria air pollutants are available at: <https://www.epa.gov/air-trends/air-quality-design-values>.

Additionally, any projects that would not qualify as major modifications under the revised definitions would still be subject to the preconstruction review and permitting requirements of Tennessee's SIP-approved minor NSR regulations at TAPCR 1200-3-9-.01(1). Under the SIP, no construction permit shall be issued if approval to construct or modify the air contaminant source would violate ambient air quality standards, would cause a violation of any requirement under TAPCR 1200-3, would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of NAAQS in a neighboring state. *See* TAPCR 1200-3-9-.01(1)(e).<sup>11</sup> Therefore, the revision should not interfere with attainment or maintenance or any other requirement of the CAA because any project that would qualify for the use of different baseline periods would still be subject to the preconstruction review and permitting requirements of the SIP-approved minor NSR program.

#### **IV. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the portions of TAPCR 1200-3-9-.01 "Construction Permits," effective April 24, 2013, that specifically revise the definitions of "baseline actual emissions" in Tennessee's SIP-approved PSD and NNSR regulations as discussed above.<sup>12</sup> EPA

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<sup>11</sup> Tennessee's SIP-approved minor NSR rules require a source impact analysis with modeling. *See* TAPCR 1200-3-9-.01(1)(f). These rules also require BACT for minor NSR sources in nonattainment areas. *See* TAPCR 1200-3-9-.01(5)(b)2.(ii).

<sup>12</sup> The state effective date of the rule changes to the definitions of "baseline actual emissions" in Tennessee's May 28, 2009, SIP revision is May 10, 2009. However, these changes to Tennessee's rule are captured and superseded by the version of TAPCR 1200-3-9-.01 that was state effective on April 24, 2013. On July 25, 2013 (78 FR 44889), EPA approved portions of the April 24, 2013 version of TAPCR 1200-3-9-.01 into the SIP and modified the state effective date at 40 CFR 52.2220(c) accordingly.

has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **V. Proposed Action**

EPA is proposing to approve the portions of Tennessee’s May 28, 2009, SIP revision that change the definitions of “baseline actual emissions” in TAPCR 1200-3-9-.01, - “Construction Permits,” as discussed above.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal

governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 8, 2018.

Onis “Trey” Glenn, III,

Regional Administrator,

Region 4.

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